



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Mr. Robert E. Hager
Law Offices of Nichols, Jackson, Dillard, Hager
and Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR94-103

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 23937.

The City of Coppell (the "city") received an open records request for "[a]ny and all complaints filed by a citizen or employee of the City of Coppell against officer Mike Cantrell during the past three years." You state that you have released to the requestor one complaint that was found to be "sustained" in 1992. You seek to withhold, however, a more recent complaint against the officer pursuant to sections 552.101, 552.102(a), 552.108, and 552.111 of the Government Code.

You contend that section 552.108 of the Government Code protects the requested complaint because the city police department is currently conducting an internal affairs investigation into the allegations contained in the complaint. Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
[and]

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986) at 2. Although one of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture, *see* Open Records Decision Nos. 133, 127 (1976), we note that the allegations contained in the complaint are not of a criminal nature. You have not explained, nor is it apparent to this office, how the release of the complaint to the public would unduly interfere with law enforcement, especially in light of the fact that the officer who is the subject of the complaint has reviewed the record at issue. *See also* Open Records Decision No. 208 (1978). Consequently, the city may not withhold the complaint pursuant to section 552.108.

We next address your section 552.111 claim. Section 552.111 of the Government Code protects interagency and intra-agency memoranda and letters, but only to the extent that the documents contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993), this office held that:

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

Further, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). The complaint at issue consists only of factual allegations pertaining to an internal personnel matter and as such does not come under the protection of section 552.111.

Finally, we address your claims that the city must withhold the complaint in order to protect the subject officer's privacy interests. Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). The information at issue pertains solely to a city employee's actions while a public servant, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has a legitimate interest in knowing the reasons for the dismissal, demotion, promotion, or resignation of a public employee). Section 552.102 was not intended to protect the type of information at issue here.² Because you have not demonstrated that the complaint is protected from required public disclosure, the city must release the complaint in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

²You specifically assert that the release of the information will invade the privacy of the officer in question by placing him in a false light. As noted in Open Records Decision No. 579 (1990), the gravamen of a false light privacy complaint is not that the information revealed is confidential, but that it is false. Therefore, an exception to the Open Records Act focused on the confidentiality of information does not embrace this particular tort doctrine. On the other hand, if any portion of the requested complaint is in fact inaccurate or untrue, there is no reason that the city may not also release, along with the requested complaint, other supplemental information that explains why and to what extent the information is inaccurate or that otherwise clarifies the information contained in the record at issue.

We also note that the Texas Supreme Court has recently called into question whether the tort of false light privacy exists in this state and that, if in fact the tort does exist, it requires a showing of actual malice as an element of recovery. *See Diamond Shamrock Ref. & Mktg. Co. v. Mendez*, 844 S.W.2d 198 (Tex. 1992).

Ref.: ID# 23937

ID# 24045

ID# 24047

ID# 24304

Enclosures: Submitted documents

cc: Mr. Michael Coleman
Reporter
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1712 E. Beltline Road
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(w/o enclosures)